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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/626,464	07/24/2003	Alexandre Blais	701826-054280	1325
50828	7590	10/28/2009	EXAMINER	
DAVID S. RESNICK NIXON PEABODY LLP 100 SUMMER STREET BOSTON, MA 02110-2131			PRYOR, ALTON NATHANIEL	
			ART UNIT	PAPER NUMBER
			1616	
			MAIL DATE	DELIVERY MODE
			10/28/2009	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/626,464

Applicant(s)

BLAIS, ALEXANDRE

Examiner

ALTON N. PRYOR

Art Unit

1616

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 09 October 2009.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-9, 11-16 and 18-22 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-9, 11-16 and 18-22 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB-08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☒ Other: Entry of 37 CFR 1.116

DETAILED ACTION

Applicant's request for reconsideration of the finality of the rejection of the last Office action is persuasive and, therefore, the finality of that action is withdrawn. New prior art rejections are set forth below.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-9, 11-16 and 18-22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Choi et al (KR 2001015511; 2/26/01). Choi et al. teach microbial preparation that is produced as a liquid or solid agent comprising a ferment culture of *B. subtilis*, soy bean powder (nutrient for bacteria), glucose (binder), ammonium sulfate (fertilizer), calcium phosphate, magnesium sulfate and water. Choi et al. teaches that the composition has a pH of 7 at 30 degree C. Choi et al do not teach the instant arrangement of fertilizer and bacteria, i.e. wherein the bacteria ferment is sprayed onto to fertilizer granular. In the absence of an unexpected for the instant arrangement over simply combining the ingredients as described in Choi et al, Choi et al simple mixing of the ingredients (bacteria, fertilizer and binder) makes instant arrangement obvious. Choi et al. do not teach the instant ferment application rate to fertilizer, cool down temperature, concentration of bacteria and concentration step. It is well within the skill of an artisan in the field to optimize parameters of an invention such as ferment application

rate to fertilizer, cool down temperature and concentration. One would have been motivated to do this in order to develop a composition that would have been most effective at controlling as well as promoting the healthy growth of plants.

Claims 1-9,11,14-16 and 18-22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Mehta (USPN 6228806; 5/8/01). Mehta teaches a fertilizer composition comprising urea, ammonium phosphate, potassium chloride mixed with *Clostridium pasteurianum* (abstract, column 5 lines 10-30). Mehta teaches that nutrients can be included in the composition (column 1 lines 33-47). Mehta teaches at least about 100,000 to about 1,000 million microorganisms per gram of fertilizer (claims 1 and 4). Mehta does not teach the instant arrangement of fertilizer and bacteria, i.e. wherein the bacteria ferment is sprayed onto to fertilizer granular. In the absence of an unexpected for the instant arrangement over simply combining the ingredients as described in Mehta, Mehta's simple mixing of the ingredients (bacteria, fertilizer and binder) make instant arrangement obvious. Mehta does not teach the instant ferment application rate to fertilizer, cool down temperature, concentration of bacteria and concentration step. It is well within the skill of an artisan in the field to optimize parameters of an invention such as ferment application rate to fertilizer, cool down temperature and concentration. One would have been motivated to do this in order to develop a composition that would have been most effective at controlling pests as well as promoting the healthy growth of plants.

Telephonic Inquiry

Any inquiry concerning this communication or earlier communications from the examiner should be directed to ALTON N. PRYOR whose telephone number is (571)272-0621. The examiner can normally be reached on 8:00 a.m. - 4:30 p.m..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Johann Richter can be reached on 571-272-0646. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Alton N. Pryor/
Primary Examiner, Art Unit 1616